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Attorneys for Plaintiff
Deer Stags, Inc.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X		
DEER STAGS, INC.,	:	Index No. 06 CV 0626 (RJH)
	:	
Plaintiff,	:	
	:	COMPLAINT FOR
- against -	:	DECLARATORY
	:	JUDGMENT OF
OH! SHOES, LLC.,	:	<u>NON-INFRINGEMENT</u>
	:	
Defendants.	:	ECF CASE
	:	
-----X		

Plaintiff, Deer Stags, Inc., (“Deer Stags” or “Plaintiff”), by its attorneys Hartman & Craven LLP, as and for its complaint against defendant Oh! Shoes, LLC. (“Oh! Shoes” or “Defendant”), respectfully alleges the following:

Nature of Action

1. This is a civil action seeking declaratory relief of non-infringement of trademarks.
2. At issue is the ability of Deer Stags to sell footwear under the trademark Oh...DEER!. Although numerous trademark owners claim rights in trademarks in Class 25 that are comprised either in part or in whole by the term “oh,” Defendant is seeking to prevent Plaintiff from using its mark in commerce in connection with footwear.

3. Defendant is the owner of the OH! trademark and sells footwear under this mark. Annexed hereto as Exhibit A is a copy of a status report printed from the United States' Patent and Trademark Office (the "USPTO") database.

4. Plaintiff Deer Stags is engaged in the manufacture and sale of a variety of casual and dress footwear for men and women. Plaintiff is also the owner of federally registered trademarks, which include the following: DEER STAGS, Reg. No. 2,228,434, DEER STAGS with design, Reg. No. 1,936,341, DEER STAGS ORIGINAL SINCE 1929, Reg. No. 1,944,901, SOFT STAGS with design, Reg. No. 1,955,547, S.U.P.R.O. SOCK with design, Reg. No. 2,881,969, and S.U.P.R.O. SOCK SUPER UNDER-FOOT PEDORTHIC RADICAL ORTHOTIC, Reg. No. 2,824,252 (the "Deer Stags' Marks"). Annexed hereto as Exhibit B are copies of the status reports for each of the listed trademarks printed from the USPTO's database.

5. Defendant OH! Shoes claims exclusive ownership of the "oh" mark in connection with footwear and has threatened Plaintiff Deer Stags with legal action for trademark infringement due to an alleged likelihood of confusion between Defendant's OH! mark and Deer Stags' Oh....DEER! mark. In light of established U.S. trademark law principles, however, Deer Stag's use of the term "oh" as part of its trademark is entirely lawful. Annexed hereto as Exhibit C is a copy of the Defendant's cease desist letter served on Deer Stags' attorney.

6. Plaintiff therefore seeks a declaration that the use of its Oh...DEER! trademark in connection with footwear is entirely lawful and does not infringe any of Defendant's trademark rights.

Venue and Jurisdiction

7. Jurisdiction is proper in this Court because this litigation arises under federal law, namely 17 U.S.C. 1051 et seq. (Lanham Act). The Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question) and § 1338 (trademarks), and § 2201 (Declaratory Judgment Act).

8. This Court has personal jurisdiction over Defendant because Defendant, upon information and belief, conducts business in the State of New York and within this District, including contracting with companies within the State, advertising and selling its products in New York, and by attending trade shows and otherwise soliciting business in New York.

9. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c).

10. An actual case or controversy has arisen between the parties. Defendant has threatened litigation against Deer Stags, and has asserted that Deer Stags' use of the trademark Oh...DEER! in connection with footwear constitutes trademark infringement. These statements threaten injury to Deer Stags. See Exhibit C.

Parties

11. Plaintiff Deer Stags is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York. Deer Stags is a well-renowned footwear manufacturer and has manufactured and sold various types of footwear sold under the DEER STAGS marks.

12. On information and belief, Defendant OH! Shoes is a limited liability company formed under the laws of the State of Oregon. Upon information and belief, Defendant is engaged in the business of selling shoes and advertises and sells such products via shoe stores and the Internet to customers within the jurisdiction of this Court.

General Allegations

I. Deer Stags

13. Deer Stags sells a variety of comfort shoes and stand-alone brands that are marketed under various trademarks (See para. 4). DEER STAGS brand shoes have been sold in the U.S. since 1929.¹

14. One of Deer Stags' stand-alone brands is its line of women's footwear sold under the Oh...DEER! trademark.

15. Deer Stags has used the Oh...DEER! mark in interstate commerce since January 14, 2004.

16. The Oh...DEER! mark is used as a play on words – that is, a play on the name of the company, Deer Stags. When used on its respective shoe boxes and advertisements, the Oh...DEER! mark is found inside a cartoon character's thought bubble. The Oh...DEER! mark is located on all sides of the shoe box, as well as under the box lid and the mark is imprinted on the box's tissue paper. Furthermore, the lid and the sides also include the phrase "COMFORT FOOTWEAR". Annexed hereto as Exhibit D is a copy of Deer Stags' shoebox which demonstrates use of the Oh...DEER! mark.

17. Deer Stags filed a trademark application with the United States Patent Trademark Office ("USPTO") on July 29, 2005 for the mark Oh...DEER! in Class 25 for footwear, Serial No.: 78/681,351. Annexed hereto as Exhibit E is a copy of the status report from the USPTO's database for the Oh...DEER! trademark application.

18. Oh...DEER! brand footwear can be found in stores such as Goody's Family Clothing Stores, Marshall's, TJ Maxx, QVC, Bob's Stores, Dress Barn, Strawberry, as well as on Internet web sites such as www.zappos.com.

II. OH! Shoes

19. Based on information and belief, Defendant sells a variety of dress and heeled women's shoes that are marketed under the OH! trademark.

20. More importantly, Defendant uses the OH! mark in conjunction with a stylized design. The OH! mark consists of a stylized logo whereby the heel of a shoe becomes the OH! mark's exclamation point. Annexed hereto as Exhibit F is a copy of an advertisement demonstrating the Defendant's OH! mark.

21. According to the status report, Defendant has used the OH! mark in commerce since August 30, 2004. See Exhibit A.

22. Based on information and belief, OH! brand footwear can be found in New York stores such as Marty's and Foot Solutions, as well as on Internet web sites such as www.zappos.com.

23. Furthermore, Defendant attended the New York Shoe Expo held at the Javits Convention Center from June 8 through June 10, 2005. Annexed hereto as Exhibit G is a copy of the cover booklet for the New York Shoe Expo and its directory listing which identifies Defendant OH! Shoes as a participant in the event.

III. The Present Dispute

24. On or about December 1, 2005, Hartman & Craven, counsel for Deer Stags, received a letter dated November 11, 1005, from Ronald T. Adams, an attorney at Black Helterline LLP ("Black Helterline"), counsel to Defendant, demanding that Deer Stags "immediately ceases and desist from further use of oh...Deer! and provide written assurances that Deer Stags, will withdraw its pending application for oh...Deer! or let it expire." See Exhibit C.

¹ Plaintiff Deer Stags has owned the Deer Stags' Marks since 1989 when it acquired them from previous owner.

25. In the letter, Defendant alleged that it is the owner of the trademark “OH!” for footwear, Reg. No. 2,968,373, and that Deer Stag’s Oh...DEER! trademark is creating confusion at trade shows and on www.zappos.com and is diluting the effectiveness of the OH! trademark.

26. As the term “oh” is a ubiquitous and ordinary mark used in connection with clothing and footwear, it is a weak mark and is not entitled to exclusive protection herein. Accordingly, Plaintiff is entitled to a declaration that its use of the trademark Oh....DEER! in connection with footwear neither infringes Defendant’s trademark nor violates the Lanham Act.

Declaratory Relief of Non-Infringement Against Defendant
(Declaratory Judgment Pursuant to 28 U.S.C. 2201)

27. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 26 of this Complaint as if fully set forth herein.

28. Defendant has claimed that Deer Stags’ sale of footwear under its Oh...DEER! trademark constitutes trademark infringement, and has threatened to bring a lawsuit against Deer Stags on this basis.

29. Based on the foregoing allegations, there exists between the parties an actual, present and justiciable controversy concerning Deer Stags’ right to sell footwear under the Oh...DEER! trademark.

30. Deer Stags seeks a declaration from this Court that its use of the trademark Oh...DEER! in connection with footwear does not infringe upon any rights that Defendant may have in its OH! Trademark.

Prayer for Relief

WHEREFORE, Plaintiff Deer Stags, Inc., respectfully prays for judgment as follows:

- (a) Declaring that Plaintiff Deer Stags' use of the trademark Oh...DEER! in connection with the manufacture and sale of footwear does not violate the Lanham Act, 15 U.S.C. § 1125 or otherwise infringe upon any rights that Defendant may have in its OH! mark;
- (b) Awarding Plaintiff Deer Stags its costs and disbursements, including expert witness fees, in this action; and
- (c) For such other and further relief to which Deer Stags may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

Dated: New York, New York
January 26, 2006

HARTMAN & CRAVEN LLP

By: s/Edward White/
Edward White (EW-0368)

488 Madison Avenue
16th Floor
New York, New York 10022
(212) 753-7500

*Attorneys for Plaintiff
Deer Stags, Inc.*

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:23:49 ET

Serial Number: 78243997 Assignment Information

Registration Number: 2968373 Assignment Information

Mark (words only): OH!

Standard Character claim: No

Current Status: Registered.

Date of Status: 2005-07-12

Filing Date: 2003-04-30

Transformed into a National Application: No

Registration Date: 2005-07-12

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-06-03

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. OH! SHOES, LLC

Address:

OH! SHOES, LLC
4009 NW DEVOTO
PORTLAND, OR 97221
United States

Legal Entity Type: Ltd Liab Co

State or Country Where Organized: Oregon

Latest Status Info

GOODS AND/OR SERVICES

International Class: 025

Men's, women's and children's footwear namely shoes, boots, sport shoes, and slippers; clothing namely, shirts, blouses, skirts, coats, trousers, dresses, pullovers, pajamas, socks and stockings, jumpers, underpants, underclothes, sweaters, hats, scarves, ties, raincoats, overcoats, swimwear, wind jackets, belts, fur coats, headscarves, gloves, dressing-gowns and bath-robos

First Use Date: 2004-01-31**First Use in Commerce Date: 2004-08-30****Basis: 1(a)**

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-07-12 - Registered - Principal Register

2005-04-29 - Law Office Registration Review Completed

2005-04-19 - Assigned To LIE

2005-04-11 - Allowed for Registration - Principal Register (SOU accepted)

2005-03-26 - Statement of use processing complete

2005-01-31 - Amendment to Use filed

2005-01-31 - TEAS Statement of Use Received

2004-08-10 - Notice of allowance - mailed

2004-05-18 - Published for opposition

2004-04-28 - Notice of publication

2004-02-25 - Approved for Pub - Principal Register (Initial exam)

2004-01-14 - Communication received from applicant

1/26/2006 10:23 AM

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=78243997&act...>

2004-01-14 - Email Received

2003-09-28 - Non-final action e-mailed

2003-09-28 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Ronald T. Adams (Attorney of record)

Ronald T. Adams
Black Helterline
1900 Fox Tower 805 SW Broadway
Portland, OR 97205-3359

Phone Number: 503-417-2132

Fax Number: 503-417-2172

1/26/2006 10:23 AM

EXHIBIT B

Latest Status Info

Page 1 of 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:32:21 ET

Serial Number: 75431736

Registration Number: 2228434

Mark (words only): DEER STAGS

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2005-05-11

Filing Date: 1998-02-10

Transformed into a National Application: No

Registration Date: 1999-03-02

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-05-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
1414 Avenue of the Americas 17th Floor
New York, NY 10019
United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025

footwear, namely, boots, canvas shoes, casual shoes, dress shoes, golf shoes, hiking shoes, sandals,

Latest Status Info

walking shoes

First Use Date: 1974-04-00**First Use in Commerce Date:** 1974-04-00**Basis:** 1(a)

ADDITIONAL INFORMATION

Disclaimer: "DEER"**Prior Registration Number(s):**

1936341

1944901

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-05-11 - Section 8 (6-year) accepted & Section 15 acknowledged

2005-03-02 - Section 8 (6-year) and Section 15 Filed

2005-03-02 - TEAS Section 8 & 15 Received

1999-03-02 - Registered - Principal Register

1998-12-08 - Published for opposition

1998-11-06 - Notice of publication

1998-09-25 - Approved for Pub - Principal Register (Initial exam)

1998-09-23 - Examiner's amendment mailed

1998-09-11 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

ROBERT S LIPTON (Attorney of record)

ROBERT S LIPTON
LIPTON WEINBERGER & HUSICK
PO BOX 934
MEDIA PA 19063-0934

Latest Status Info

Page 1 of 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:32:40 ET

Serial Number: 74441694 Assignment Information

Registration Number: 1936341 Assignment Information

Mark

DEER  STAGS

(words only): DEER STAGS

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2002-01-03

Filing Date: 1993-09-30

Transformed into a National Application: No

Registration Date: 1995-11-21

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-10-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
17th Floor 1414 Avenue of the Americas

Latest Status Info

New York, NY 10019
United States
Legal Entity Type: Corporation
State or Country of Incorporation: New York

GOODS AND/OR SERVICES

International Class: 025
footwear composed in either whole or substantial part of deerskin
First Use Date: 1989-12-15
First Use in Commerce Date: 1989-12-15

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "DEER"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-10-10 - Combined Section 8 (10-year)/Section 9 filed
2005-10-10 - TEAS Section 8 & 9 Received
2002-01-03 - Section 8 (6-year) accepted & Section 15 acknowledged
2001-11-13 - Post Registration action mailed Section 8 & 15
2001-10-18 - Section 8 (6-year) and Section 15 Filed
1995-11-21 - Registered - Principal Register
1995-08-29 - Published for opposition
1995-07-28 - Notice of publication
1995-05-02 - Approved for Pub - Principal Register (Initial exam)
1995-04-27 - Examiner's amendment mailed
1994-10-27 - Final refusal mailed
1994-03-03 - Non-final action mailed

Latest Status Info

Page 3 of 3

1994-01-25 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Robert S. Lipton (Attorney of record)

ROBERT S. LIPTON
LIPTON, WEINBERGER & HASICK
201 NORTH JACKSON STREET
P.O. BOX 934
MEDIA, PA 19063-0934

Latest Status Info

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:32:53 ET

Serial Number: 74441696 Assignment Information

Registration Number: 1944901 Assignment Information

Mark



(words only): DEER STAGS ORIGINAL SINCE 1929

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2002-03-08

Filing Date: 1993-09-30

Transformed into a National Application: No

Registration Date: 1996-01-02

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-10-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
1414 AVE OF THE AMERICAS 17TH FL

New York, NY 10019
United States
Legal Entity Type: Corporation
State or Country of Incorporation: New York

International Class: 025
 footwear composed in either whole or substantial part of deerskin
First Use Date: 1989-12-15
First Use in Commerce Date: 1989-12-15

ADDITIONAL INFORMATION

MADRID PROTOCOL INFORMATION

PROSECUTION HISTORY

[http://www.mcafee.com/servlet/tarr?reposer=registration&entry=1944901&action=Request+Sta... 1/26/2006](#)

Latest Status Info

1995-04-27 - Examiner's amendment mailed
1994-10-27 - Final refusal mailed
1994-03-03 - Non-final action mailed
1994-01-25 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Robert S. Lipton (Attorney of record)

ROBERT S. LIPTON
LIPTON WEINBERGER & HUSICK
201 NORTH JACKSON STREET
P.O. BOX 934
MEDIA, PA 19063-0934

Latest Status Info

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:33:10 ET

Serial Number: 74441695 Assignment Information

Registration Number: 1955547 Assignment Information

Mark



(words only): SOFT STAGS THE GENUINE COMFORT SHOE

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2002-04-16

Filing Date: 1993-09-30

Transformed into a National Application: No

Registration Date: 1996-02-13

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2005-10-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.

1414 Avenue of the Americas 17th Floor

Latest Status Info

New York, NY 10019

United States

Legal Entity Type: Corporation**State or Country of Incorporation:** New York

GOODS AND/OR SERVICES

International Class: 025

foot wear

First Use Date: 1989-12-15**First Use in Commerce Date:** 1989-12-15**Basis:** 1(a)

ADDITIONAL INFORMATION

Disclaimer: "SOFT" and "GENUINE COMFORT SHOE"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-10-10 - Combined Section 8 (10-year)/Section 9 filed

2005-10-10 - TEAS Section 8 & 9 Received

2002-04-16 - Section 8 (6-year) accepted & Section 15 acknowledged

2002-02-12 - Section 8 (6-year) and Section 15 Filed

1996-02-13 - Registered - Principal Register

1995-11-21 - Published for opposition

1995-10-20 - Notice of publication

1995-06-27 - Published for opposition

1995-05-26 - Notice of publication

1995-03-01 - Approved for Pub - Principal Register (Initial exam)

1995-01-17 - Communication received from applicant

1994-12-19 - Final refusal mailed

Latest Status Info

1994-10-26 - Communication received from applicant
1994-10-18 - Notice of unresponsive amendment mailed
1994-09-06 - Communication received from applicant
1994-03-03 - Non-final action mailed
1994-01-25 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Robert S. Lipton (Attorney of record)

ROBERT S. LIPTON
LIPTON, WEINBERGER & HUSICK
201 NORTH JACKSON STREET
P.O. BOX 934
MEDIA, PA 19063-0934

Latest Status Info

Page 1 of 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:33:21 ET

Serial Number: 75844291

Registration Number: 2881969

Mark



(words only): S.U.P.R.O. SOCK

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-09-07

Filing Date: 1999-11-10

Transformed into a National Application: No

Registration Date: 2004-09-07

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-09-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. DEER STAGS, INC.

Address:
DEER STAGS, INC.
1328 BROADWAY

Latest Status Info

Page 2 of 3

NEW YORK, NY 10001

United States

Legal Entity Type: Corporation**State or Country of Incorporation:** New York

GOODS AND/OR SERVICES

International Class: 025

ORTHOTIC INSOLES

First Use Date: 1999-11-10**First Use in Commerce Date:** 1999-11-10**Basis:** 1(a)

ADDITIONAL INFORMATION

Disclaimer: "SOCK"**Description of Mark:** THE MARK CONSISTS IN PART OF A STYLIZED DESIGN OF A DEER'S HEAD AND ANTLERS.**Prior Registration Number(s):**

1936341

1944901

1955547

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-09-07 - Registered - Principal Register

2004-08-23 - TEAS Change of Correspondence Received

2004-06-18 - Allowed for Registration - Principal Register (SOU accepted)

2004-06-14 - Statement of use processing complete

2004-05-25 - Amendment to Use filed

2004-05-27 - PAPER RECEIVED

2004-02-24 - Notice of allowance - mailed

2003-12-02 - Published for opposition

Latest Status Info

2003-11-12 - Notice of publication
2003-10-03 - Approved for Pub - Principal Register (Initial exam)
2003-08-11 - Case File in TIGRS
2000-11-20 - Letter of suspension mailed
2000-10-25 - Communication received from applicant
2000-04-25 - Non-final action mailed
2000-03-24 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Joseph Diamante (Attorney of record)

Ilene B. Tannen, Esq.
Jones Day
222 East 41st Street
New York NY 10017

Phone Number: 212-326-3939

Fax Number: 212-755-7306

Latest Status Info

Page 1 of 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:33:41 ET

Serial Number: 75844292

Registration Number: 2824252

Mark



(words only): S.U.P.R.O. SOCK SUPER UNDER-FOOT PEDORTHIC RADICAL ORTHOTIC

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-03-23

Filing Date: 1999-11-10

Transformed into a National Application: No

Registration Date: 2004-03-23

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-03-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. DEER STAGS, INC.

Address:
DEER STAGS, INC.
1328 BROADWAY

Latest Status Info

Page 2 of 3

NEW YORK, NY 10001

United States

Legal Entity Type: Corporation**State or Country of Incorporation:** New York

GOODS AND/OR SERVICES

International Class: 025

FOOTWEAR

First Use Date: 1999-11-10**First Use in Commerce Date:** 1999-11-10**Basis:** 1(a)

ADDITIONAL INFORMATION

Disclaimer: "SOCK", "SUPER", "PEDORTHIC", and "ORTHOTIC"**Description of Mark:** The mark consists in part of a stylized design of a deer's head and antlers.**Prior Registration Number(s):**

1936341

1944901

1955547

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-03-23 - Registered - Principal Register

2003-10-20 - PAPER RECEIVED

2003-12-30 - Published for opposition

2003-12-10 - Notice of publication

2003-10-03 - Approved for Pub - Principal Register (Initial exam)

2003-08-08 - Case File in TIGRS

2000-11-20 - Letter of suspension mailed

2000-10-25 - Communication received from applicant

2000-04-25 - Non-final action mailed

Latest Status Info

Page 3 of 3

CORRESPONDENCE INFORMATION

Correspondent

Joseph Diamante (Attorney of record)

JOSEPH DIAMANTE
PENNIE & EDMONDS LLP
1155 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036

EXHIBIT C

DEC-01-05

18:19

FROM-FTI Consulting

2128419350

T-415

P.001/002

F-017

B L A C K

H E L T E R L I N E LLP

ATTORNEYS AND COUNSELORS AT LAW

RONALD T. ADAMS
 Direct Dial: (503) 417-2132
 E-mail: ra@bhllaw.com
 Admitted in Oregon and Washington

November 11, 2005

File No.: 0211-2

Debra I. Resnick, Esq.
 Hartman Craven, LLP
 488 Madison Avenue
 New York, NY 10022

Reference: oh...DEER! Trademark Application, Serial No. 78681351

Dear Ms. Resnick:

We represent OH! Shoes, LLC (the "Company") the owner of the OH! trademark in International Class 025 for men's and women's shoes, etc., Registration No. 2968373.

Recently, representatives of the Company have become aware of confusion caused by the use of oh...DEER! by your client, Deer Stags, Inc. In investigating the issue, we discovered the July 29, 2005, oh...Deer! application with the Trademark Office and located your name as the attorney of record. The Company's representatives report that there is confusion at trade shows, inquiries are made as to the relationship between the OH! mark and the oh...DEER! mark as to the ownership and origin of the respective products. Another example of the confusion is the use of oh...DEER! on Zappos.com where OH! Shoes are also advertised. Both Deer Stags and the Company describe their products as comfortable and stylish women's footwear.

The Company filed its intent to use application on April 30, 2003, and began using the mark in 2004. The Company's mark was already registered when you filed the oh...Deer registration on July 29, 2005, alleging use in 2004. Deer Stags, Inc.'s use of a confusingly similar mark is creating confusion and diluting the effectiveness of the Company's trademark. The Company demands that you immediately cease and desist from further use of oh...Deer! and provide written assurances that Deer Stags, will withdraw its pending application for oh...Deer! or let it expire.

The Company has expended a considerable amount of time, effort and money in developing and promoting the OH! mark on its products. The Company takes its intellectual property rights seriously, but seeks an amicable resolution to this matter, which we believe is in



1500 FOX TOWER 805 SOUTHWEST BROADWAY PORTLAND OREGON 97205-3239
 TELEPHONE 503.224.5500 FACSIMILE 503.224.6148 WWW.BHLLAW.COM

DEC-01-05

18:19

FROM-FTI Consulting

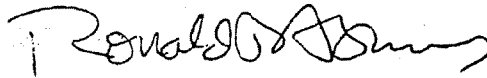
2128419350

T-415 P.002/002 F-017

Debra L. Resnick, Esq.
November 11, 2005 - Page 2

the best interest of both the Company and Dear Stags, Inc. I look forward to your response within fourteen (14) days from your receipt of this letter.

Very truly yours,



Ronald T. Adams

RTA:cmb:gl

Enclosure

H:\Client\0211-2\Corr\Resnick01 ltr.doc

cc: Mr. Greg Van Gasse

b

EXHIBIT D



oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEER

oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...

oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEE

oh...DEERI!

oh...DEERI!

oh...DEERI!

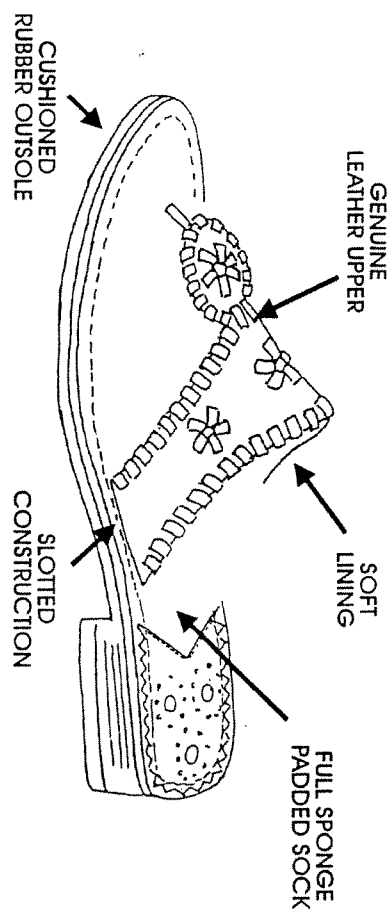
oh...DEERI!

oh...DEERI!

oh...DEERI!

oh...DEE

Oh...DEER!



COMFORT SANDAL COLLECTION

www.deerstags.com

® Deer Stags, Inc., New York 1991

EXHIBIT E

Latest Status Info

Page 1 of 2

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2006-01-26 10:20:24 ET

Serial Number: 78681351

Registration Number: (NOT AVAILABLE)

Mark

oh...DEER!

(words only): OH...DEER!

Standard Character claim: Yes

Current Status: Newly filed application, not yet assigned to an examining attorney.

Date of Status: 2005-08-05

Filing Date: 2005-07-29

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 042 -New Application Processing

Date In Location: 2005-08-05

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Deer Stags, Inc.

Address:

Deer Stags, Inc.
1414 Avenue of the Americas, 17th Floor

Latest Status Info

New York, NY 10019

United States

Legal Entity Type: Corporation**State or Country of Incorporation:** New York

GOODS AND/OR SERVICES

International Class: 025

footwear

First Use Date: 2004-01-14**First Use in Commerce Date:** 2004-01-14**Basis:** 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-09-27 - TEAS Change of Correspondence Received

2005-08-08 - Applicant amendment prior to exam entered

2005-08-08 - TEAS Preliminary Amendment Received

2005-08-04 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

Debra I. Resnick (Attorney of record)

Richard H. Koby, Esq.
Hartman & Craven LLP
488 Madison Avenue
New York NY 10022

1/26/2006

EXHIBIT F

Womens Oh Shoes - Free Shipping on all Orders \$29 and up!

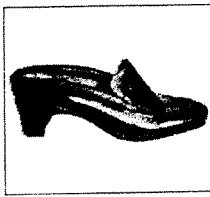
<http://www.martyshoes.com/store/womensohshoesm.htm>[Store Locations](#) [Customer Service](#) [E-Mail Us](#)

Search for your shoe..

[Home](#)[Women's Shoes](#)[Men's Shoes](#)[Kid's Shoes](#)[Store Coupon](#)[Accessories](#)**FREE SHIPPING - CONTIGUOUS US**
\$29 and up![Shopping Cart](#)[palm version](#)You are here-> [Womens Shoes](#)-->[Womens Brand Names](#) -->[Oh Shoes](#)Womens Oh Shoes
Belinda (Aubergine)

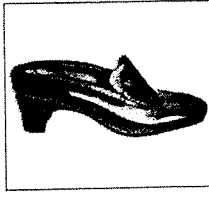
Sale:\$49.00

Compare at: \$190.00

[More Info](#) [Buy Now](#)Womens Oh Shoes
Belinda (Black)

Sale:\$49.00

Compare at: \$190.00

[More Info](#) [Buy Now](#)Womens Oh Shoes
Belinda (Brown)

Sale:\$49.00

Compare at: \$190.00

[More Info](#) [Buy Now](#)Womens Oh Shoes
Carina (Aubergine)

Sale:\$49.00

Compare at: \$190.00

[More Info](#) [Buy Now](#)**Mailing List**

E-Mail Address

First Name

Last Name

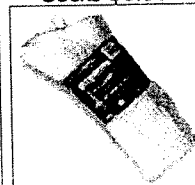
[Join our List](#)Adidas 2 Pack Socks
\$6.90Wigwam 3 Pack
Socks \$6.90Fila 2 Pack Socks
\$6.90

EXHIBIT G



June 8-10, 2005

Wednesday, Thursday and Friday

at the Javits Convention Center-
Hall 1D & 1E

The FFANY Collections at
The Hilton New York Hotel

FFANY Member Showrooms



FFaNY

NYSE Fashion Market Week
Javits Hall 1D, 1E, Hilton New York Hotel
& New York Showrooms

Markon Footwear, Inc.
 104 West 29th Street
 Suite # 8B
 212.947.0099

Matiko Footwear, Inc.
 Javits Hall 1D 1117
 Mafisse

Javits Hall 1E 300

Mavis

Javits Hall 1D 1100

Mavis -Multimoda

Javits Hall 1D 1100

Max Mouelli

Javits Hall 1D 1202

Max Red

Javits Hall 1E 310

Max Studio

1370 Ave. of the Americas

5th Floor

Tel: 212.977.7662

Fax: 212.977.7680

Me Too Shoes

1370 Ave. of the Americas

11th Floor

212.246.3939

Medori

Javits Hall 1D 1203

Mens Diego Sanz

Javits Hall 1D 910

Merrell®

717 Fifth Avenue

4th Floor (Ent: 56th St.)

212.223.8055

Mia

Javits Hall 1E 524

Mia Kids

Javits Hall 1E 524

Michael Antonio

Javits Hall 1E 107

Michael Kors

20 West 57th St., 4th Floor

212.541.9092

MICHAEL Michael Kors

11 West 42nd Street

20th Floor

212.201.8100

Michele Bertelli

270 Lafayette Street

Suite # 505

212.219.0030

Middletown Footwear

Javits Hall 1D 702

Minnetonka Moccasin

Javits Hall 1D 1310

Minnetonka Sandals

Javits Hall 1D 1310

Minnetonka Slippers

Javits Hall 1D 1310

Miss Mak Designs

Javits Hall 1D 1226

MISS ME

Javits Hall 1E 316

Moda Fusion

Javits Hall 1D 1008

Modanova

Javits Hall 1D 1202

ModaSpana

1370 Ave. of the Americas

Suite # 1004

212.262.4565

Mootsies Tootsies

1411 Broadway

17th Floor

212.391.5000

Mootsies Tootsies Kids

1411 Broadway

17th Floor

212.391.5000

Mountain Gear

Javits Hall 1D 1119

Mulinsen®

Javits Hall 1D 1217

Mustang

Javits Hall 1D 1220

N.Y.L.A.

Javits Hall 1E 104

N.Y.L.A. Men

Javits Hall 1E 104

N.Y.L.A. Shoes Inc.

Javits Hall 1E 104

Na*Na

1370 Ave. of the Americas

12th Floor

516.384.2823

Nancy Geist

Hilton 14th Floor

1420

Nancy Nancy

Hilton 14th Floor

1420

Nancy Li

Javits Hall 1E 400

Naot

Javits Hall 1D 1208

National Shoe Retailers

Association

Javits Hall 1D 827

Natures Breeze

Javits Hall 1E 139

Naughty Monkey Ftror.

Javits Hall 1E 123

Navid O Nadia

Javits Hall 1E 418

New Creators, Inc.

Javits Hall 1E 134

New Portania

Javits Hall 1D 1317

New York Transit

1370 Ave. of the Americas

5th Floor

Tel: 212.977.7662

Fax: 212.977.7680

New York Transit, Inc.

1370 Ave. of the Americas

5th Floor

Tel: 212.977.7662

Fax: 212.977.7680

Nicole

1370 Ave. of the Americas

56th St. & 6th Ave.

Suite # 1000

212.582.2700

Nicole Miller footwear

1370 Ave. of the Americas

8th Floor

212.246.4735

Nina

The Crown Building

730 Fifth Avenue

212.399.2323

Nine & Company

1411 Broadway

17th Floor

212.391.5000

Nine West

1411 Broadway

17th Floor

212.391.5000

Nine West Ftror., Corp.

1411 Broadway

17th Floor

212.391.5000

Nine West Kids

1411 Broadway

17th Floor

212.391.5000

NO ? Question

Javits Hall 1D 810

NSRA

Javits Hall 1D 827

Nurse Mates

336 West 37th Street

6th Floor

203.661.2424

Obay

Javits Hall 1D 1309

Oh...Deer!

1414 Ave. of the Americas

16th Floor

212.888.2424

Oh! Shoes

Hilton 14th Floor

1404

Olem Shoe Corp.

Javits Hall 1E 214

Oliver

Javits Hall 1D 801

Olivia Rose Tal

Hilton 14th Floor

1411

Omni Footwear Inc.

1370 Ave. of the Americas

12th Floor

516.384.2823